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FISCAL IMPACT REPORT

ORIGINAL DATE 1/21/08

SPONSOR Carraro LAST UPDATED _____ HB _____

SHORT TITLE DWI As Prior Felony for Sentencing SB 197

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 197 allows for those sentenced for a felony D.W.I. conviction to have that conviction used as a felony when being sentenced as a habitual offender under 31-18-08

SIGNIFICANT ISSUES

Eleven years ago, in *State v. Anaya*, 123 N.M. 14 (1997), the New Mexico Supreme Court ruled that a felony conviction for DWI does not count as a prior felony conviction for purposes of sentencing under the Habitual Offender Act. When a person is being sentenced for a felony and the person has one or more prior felony convictions, the present sentence is increased by one year for one prior felony, four years for two prior felonies, and eight years for three or more prior felonies. NMSA 1978, Section 31-18-17. The New Mexico Supreme Court in *Anaya* concluded that the legislature did not intend to include what was then the newly created DWI felony among those felony convictions to which the Habitual Offender Act sentencing applies. The Court found “Where, as here, the legislative intent with regard to the applicability of a criminal sentencing statute is unclear and ambiguous, it is for the legislature to clarify its intent and not the prerogative of this Court.” SB 197 appears intended to address the Court’s invitation to remove ambiguity and lack of clarity by requiring a felony DWI conviction be treated the same as any other felony conviction for purpose of habitual offender sentencing.

PERFORMANCE IMPLICATIONS

According to the AOC, increases in penalties for DWI offenses, including felony convictions for repeat offenders, have resulted in a dramatic rise in the number of DWI cases that go to trial and in the complexity of these cases. Appellate and trial time devoted to DWI cases has required a greater devotion of court resources than before penalties were increased. Courts will have to grapple with challenges to the proposal to apply habitual offender sentencing to felony DWI convictions, a process that will have a performance impact that cannot be stated with certainty.

ADMINISTRATIVE IMPLICATIONS

SB 197 gives the courts more discretion when sentencing habitual criminals. Law enforcement supports attempts to keep habitual offenders “off of the streets” to prohibit them from continuing with criminal activity, this includes both DWI offenses as well as other criminal activities.

TECHNICAL ISSUES

It would be useful for the bill to state whether it applies to pending prosecutions on its effective date, July 1, 2008, based on the date of the crime, the date of charging, or the date of sentencing. *See State v. Shay*, 136 N.M. 8, 10 (Ct.App.), *certiorari quashed*, 137 N.M. 266 (2005).

CS/mt